



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0531]

RIN 1625-AA00

Safety Zone; Unexploded Ordnance Detonation, Gulf of Mexico, Pensacola, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Gulf of Mexico near Fort Pickens in Pensacola, FL. This temporary safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards associated with the detonation of unexploded ordnance. Entry into this zone is prohibited to all vessels and persons unless authorized by the Captain of the Port Sector Mobile or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through June 30, 2018. For purposes of enforcement, actual notice will be used from June 14, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0531 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Kyle D. Berry, Sector Mobile Waterways Management Division, U.S. Coast Guard; telephone 251-441-5940, e-mail Kyle.D.Berry@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Mobile
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. It is impracticable to publish an NPRM because we must enforce this safety zone starting June 14, 2018 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It is also contrary to the public interest as it would delay the safety measures necessary to protect persons, vessels, and the marine

environment from the potential hazards associated with the detonation of unexploded ordnance.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule is contrary to public interest because it would delay the safety measures necessary to protect persons, vessels, and the marine environment from the potential hazards associated with the detonation of unexploded ordnance.

The United States Army Corps of Engineers is conducting a Remedial Investigation/Feasibility Study for the Fort Pickens Munitions Response Site 01 – Range Complex, located in Escambia County, Florida. The site, which is located along the western tip of Santa Rosa Island and extends south into the Gulf of Mexico, was used for coastal defense from before the Civil War until after World War II. There is a potential that the marine investigation may encounter munitions that will require in-water detonation to address potential explosive hazards. The safety zone will encompass a 1,000 yard square area detonation area surrounded by a 1,200 yard buffer area. The United States Army Corps of Engineers will be responsible for the detonation of ordnance within the safety zone.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Mobile (COTP) has determined that potential hazards associated with the detonation of unexploded ordnance beginning on June 14, 2018 will be a safety concern for any vessels or persons on the Gulf of Mexico near Fort Pickens in

Pensacola, FL. This rule is necessary to protect persons, vessels, and the marine environment from the potential hazards associated with the detonation of unexploded ordnance.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from June 14, 2018 through June 30, 2018. The safety zone will cover all navigable waters of the Gulf of Mexico within the approximate positions 30°17'47.65"N, 87°21'36.5"W; 30°17'47.65"N, 87°19'39.8"W; 30°16'6.35"N, 87°19'39.8"W; and 30°16'6.35"N, 87°21'36.5"W near Fort Pickens in Pensacola, FL. The safety zone will encompass a 1,000 yard square area detonation area surrounded by a 1,200 yard buffer area. A chart depicting the area is included in the docket where indicated under ADDRESSES.

The duration of this safety zone is intended to protect persons, vessels, and the marine environment, and will only be enforced if and when the detonation of unexploded ordnance is necessary. No person or vessel will be permitted to enter or transit within the safety zone during periods of enforcement unless authorized by the COTP or a designated representative. The periods of enforcement will be one hour prior to, during, and after any ordnance exploding operations. The Coast Guard was informed that the operations would take place during daylight hours only. A law enforcement vessel will coordinate all vessel traffic during the enforcement periods. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) at least 3 hours in advance of each enforcement period.

Entry into the temporary safety zone is prohibited unless authorized by the COTP

or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Mobile. Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channel 16 or by telephone at 251-441-5976. The COTP or a designated representative will inform the public of the enforcement periods of this safety zone through BNMs, LNM, and/or MSIBs as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protectors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory determination is based on the size, location, and duration of the temporary safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Gulf of Mexico only as necessary for the detonation of ordnance during a two and half week period. Moreover, the Coast

Guard will issue a BNMs via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on

actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone that will prohibit entry on a small designated area of the Gulf of Mexico near Fort Pickens in Pensacola, FL only as necessary for the detonation of ordnance. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev.01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T08-0531 to read as follows:

§ 165.T08-0531 Safety Zone; Unexploded Ordnance Detonation, Gulf of Mexico, Pensacola, FL.

(a) Location. The following area is a safety zone: All navigable waters on the Gulf of Mexico within the approximate positions 30°17'47.65"N, 87°21'36.5"W; 30°17'47.65"N, 87°19'39.8"W; 30°16'6.35"N, 87°19'39.8"W; and 30°16'6.35"N, 87°21'36.5"W near Fort Pickens in Pensacola, FL.

(b) Effective dates. This section is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through June 30, 2018. For purposes of enforcement, actual notice will be used from June 14, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) Enforcement periods. This section will be enforced during the effective period one hour prior to, during, and after any ordnance exploding operations. The operations will take place during daylight hours only. The Captain of the Port Sector Mobile (COTP) or a designated representative will inform the public through Broadcast

Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) at least 3 hours in advance of each enforcement period. A law enforcement vessel will coordinate all vessel traffic during the enforcement periods.

(d) Regulations. (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Mobile.

(2) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channel 16 or by telephone at 251-441-5976.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(e) Informational broadcasts. The COTP or a designated representative will inform the public of the enforcement periods of this safety zone through BNMs, LNMs, and/or MSIBs as appropriate.

Dated: June 6, 2018.

M.R. McLellan,
Captain, U.S. Coast Guard,
Captain of the Port Sector Mobile.
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